UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/339,325	06/23/1999	YOAV SHOHAM	ARIBP032	2458

21912   7590   03/31/2010
VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO, CA 95014

EXAMINER
VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
03/31/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-13,22 and 24-43* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-13,22 and 24-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Response to Amendment

1.   The amendment filed on December 31, 2009, has amended Claims 11-13, 22,

24-29, 32, 34, 36, 37, 40, and 42. No claims were cancelled and no new claims were

added. Thus, the currently pending claims considered below remain Claims 11-13, 22

and 24-43.

Claim Rejections - 35 USC § 101

2.   The amendment filed on December 31, 2009 has overcome the 35 U.S.C. 101

rejection of Claims 28-35 raised in the Office Action dated September 24, 2009. Thus

the examiner hereby withdraws the rejection.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under
section 122(b), by another filed in the United States before the invention by the
applicant for patent or (2) a patent granted on an application for patent by
another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application
filed in the United States only if the international application designated the
United States and was published under Article 21(2) of such treaty in the English
language.

4.   Claims 11-13, 22 and 24-43 are rejected under 35 U.S.C. 102(e) as being

anticipated by <u>Woolston</u> (U.S. Patent Number: 5,845,265).

Claims 22, 28, and 36: <u>Woolston</u> discloses a system, method of managing the

trading of goods auctioned by auction participants, and computer program product

for managing the trading of goods auctioned by auction participants comprising:

a. A market specification console (posting terminal 700) configured to receive at

    least one market protocol from a user, the at least one market protocol including:

    a first market phase, wherein the first market phase is defined by one or more

    user selectable trading primitives that dictate the behavior of one or more

    components in a programmable auction server and a succeeding phase, wherein

    the succeeding phase is defined by one or more selectable trading primitives that

    dictate the behavior of one or more components in a programmable auction

    server. (Col 4, lines 10-37; Col 5, line 48 through Col 6, line 53; Col 10, lines 3-

    18; and Col 15, line 23 - Col 16, line 58).

b. A programmable auction server (market maker computer 800), in communication

    with the market specification console, to programmable auction server configured

    to : receive the at least one market protocol defined by the market specification

    console and manage trading of at least one good auctioned by at least one

    auction participant in accordance with the protocol. (Col 4, lines 39-58; Col 5,

    line 48 through Col 6, line 53; and Col 14, lines 51-63).

Claims 11, 29, and 37: <u>Woolston</u> discloses the system, method, and computer

program product for conducting auctions as in Claims 22, 28, and 36 respectively,

wherein the at least one market specification console includes a graphical user

interface to configure the at least one market protocol. (Col 15, line 23 - Col 16, line

58; and Figure 13).

Claims 12, 30, and 38: <u>Woolston</u> discloses the system, method, and computer

program product for conducting auctions as in Claims 11, 29, and 37 respectively,

wherein the at least one market protocol is predefined in parameterized form on the

graphical user interface. (Col 15, line 23 - Col 16, line 58; and Figure 13)

Claims 13, 31, and 39: <u>Woolston</u> discloses the system, method, and computer

program product for conducting auctions as in Claims 11, 29, and 37 respectively,

wherein the graphical user interface is configured to allow the user to define arbitrary

market protocols. (The user in <u>Woolston</u> uses the GUI to enter all of the selections

pertaining to the auction when setting up the auction for posting to the auction

server. These protocols are in both parameterized form, such as category or

subcategory, as well as arbitrary protocols such as reserve price and auction date

and/or time.)(Col 5, line 48 through Col 6, line 53; Col 15, line 23 - Col 16, line 58;

and Figure 13)

Claims 24, 32, and 40: Woolston discloses the system, method, and computer program product for conducting auctions as in Claims 22, 28, and 36 respectively, wherein the first market phase includes an interval in which at least one transaction occurs. (Col 5, line 48 through Col 6, line 53)

Claims 25, 33, and 41: Woolston discloses a system, method, and computer program product for conducting auctions as in Claims 24, 32, and 40 respectively, wherein the transaction is selected from the group including submitting a bit, admitting a bid, withdrawing a bid, and replacing a bid. (Col 5, line 48 through Col 6, line 53; Col 15, line 23 - Col 16, line 58)

Claims 26, 34, and 42: Woolston discloses a system, method, and computer program product for conducting auctions as in Claims 22, 28, and 36 respectively, where in the first market phase is terminated by a condition. (Col 5, line 48 through Col 6, line 53)

Claims 27, 35, and 43: Woolston discloses a system, method, and computer program product for conducting auctions as in Claims 26, 34, and 42 respectively, wherein the condition is a time period. (Col 5, line 48 through Col 6, line 53)

Response to Arguments

5.   Applicant's arguments filed December 31, 2009 have been fully considered but
they are not persuasive. The applicant argues that Woolston does not disclose the
multi-phase protocol as recited in claims 22, 28, and 36. The applicant further
asserts that Claims 22, 28, and 36 recite a "succeeding phase is defined by one or
more selectable trading primatives that dictate the behavior of one or more
components in a programmable auction server" is not found in the Woolston
reference. However, the applicants claims are directed towards a system
comprising a console configured to receive one (or more) market protocol from a
user; a method comprising receiving one (or more) market protocols; and a
computer program product comprising instructions for receiving one (or more)
market protocol from a user. The one (or more) protocol including: a first market
phase that is defined by one (or more) user selectable trading primitive that dictate
the behavior of one (or more) component in a programmable auction server; and
information associated with the conducting of a succeeding phase. In each of these
claims the claimed invention is receiving one (or more) protocol and implementing
the one (or more) protocol to deploy the auction. Thus the applicant is not claiming
a multi-phase protocol. The applicant is merely claiming receiving a market protocol
and using that information to implement an auction. The market protocol includes a
first market phase and a succeeding phase. The "wherein" clause is directed
towards the succeeding phase of the market protocol as provided by the user and
indicates that it is expected that the user will provide a market protocol that includes
a first phase and a succeeding phase that includes such a primitive. However the

wherein clause does not provide any structure to the claimed console, and does not

require a step to be performed by the claimed console. According to MPEP

2111.04, claim scope is not limited by claim language that suggests or makes

optional but does not require steps to be performed, or by claim language that does

not limit a claim to a particular structure. Thus the scope of Claims 22, 28, and 36

as currently written do not require the limitations argued by the applicant.

Regardless, the teachings Woolston disclose receiving an auction start date and

time, an auction stop date and time, and a reserve price. After the auction

commences a determination is made as to whether each bid satisfies a reserve price

in Col 5, line 48 through Col 6, line 53. Given the applicant specification a trading

primitive is a rule such as a market rule governing a particular phase that dictates

the behavior of a component (Spec Page 7, lines 1-3). Thus a rule dictating when

the auction is to begin is a trading primitive, a rule dictating when the auction is to

end is a trading primitive, as well as information associated with the conducting of a

succeeding phase, and a reserve price is a trading primitive. In order to further the

prosecution of the case the examiner provides below a listing of sections in the

applicants specification that the examiner is using to assist in the interpretation of

the breadth and scope of the applicants claims:

 Market phase: a phase may be defined by a time period, a limitation, a condition,

    exception, exclusion, or a provisio etc. (Spec Page 6, lines 15-17)

    Each phase of an auction is defined by specifying the trading

primatives it comprises or the timeline for application of the trading

primatives (Spec Page 11, lines 10-11)

Protocol: (e.g. opening auctions, admitting or rejecting bids, clearing prices,

notifying traders of market events, and closing auctions) (Spec

Page 8, lines 1-2) Combinations of rules for participating in and

operating a market (Spec page 8, line 15) A market protocol may

accord to distinct market entities various permissions to perform

activities such as bidding in certain ways or retrieving certain

information (Page 12, lines 14-15)

Trading primitive: rules such as market rules governing a particular phase that

dictate the behavior of a component (Spec Page 7, lines 1-3) a

TP might specify whether an auction is one-sided, a sealed-bid, or

"open outcry". TPs might also specify when important events,

such as clears or information releases are to occur (Spec 11, lines

5-9)

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JOHN VAN BRAMER whose telephone number is

(571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through

Thursday.

        If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax

phone number for the organization where this application or proceeding is assigned

is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-

272-1000.

/John Van Bramer/
John Van Bramer
Primary Examiner, Art Unit 3622